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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 DOUGLAS JOHN MARTIN TOBIN,

9 Plaintiff,

10 v.

11 STATE OF WASHINGTON, and PIERCE
12 COUNTY,

Defendants.

Case No. C08-5591 RJB/JRC

ORDER ADOPTING REPORT AND
RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation of U.S. Magistrate
14 Judge J. Richard Creatura. Dkt. 17. The Court has reviewed the Report and Recommendation,
15 Objections to the Report and Recommendation, and the remaining record.

16 On October 2, 2008, Plaintiff filed this action pursuant to 42 U.S.C. § 1983. Dkt. 1. On
17 April 2, 2009, a Report and Recommendation was filed recommending dismissal of the State of
18 Washington with prejudice. Dkt. 17. The basis for the dismissal is *res judicata* and Eleventh
19 Amendment immunity. *Id.* The facts of this case are set out in the Report and Recommendation and
20 are adopted here by reference.

21 On April 13, 2009, Plaintiff filed Objections to the Report and Recommendation, initially
22 complaining that he was not given adequate time to respond. Dkt. 20. This objection does not
23 provide a basis to reject the Report and Recommendation because Plaintiff did, in fact, file lengthy
24 objections, and on April 28, 2009, filed an additional pleading entitled "Response of Plaintiff." Dkts.
25 20 and 22.

26 ORDER - 1

1 Plaintiff then objects to reference in the Report and Recommendation to another Report and
2 Recommendation (Dkt. 23), noted for June 5, 2009, that recommends dismissal of Defendant Pierce
3 County for failure to properly serve it. Dkt. 20. Plaintiff argues that he is still awaiting his “Server
4 to return the Affidavit of Personal Service.” *Id.* This objection does not provide a basis for rejection
5 of the now pending Report and Recommendation. The issue of the service of process on Pierce
6 County is not presently before the Court.

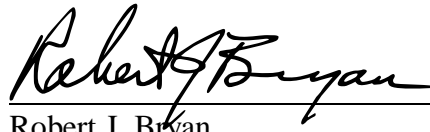
7 Plaintiff argues that the Report and Recommendation inaccurately stated that “Plaintiff
8 received all his Property,” (Dkt. 20, at 2), and that “the restitution in this case was to be split with
9 the tribes” (Dkt. 20, at 3). Plaintiff fails to explain why the Report and Recommendation should not
10 be adopted even if his assertions are true. Plaintiff reargues that a § 1983 action is properly made
11 against the State of Washington. Dkt. 20. Plaintiff fails to provide an authority for his assertion.
12 Plaintiff fails to make any showing that the State of Washington waived its Eleventh immunity.

13 In Plaintiff’s “Response of Plaintiff,” he objects to consideration of the State of Washington’s
14 Response to his Objections because it is an “unauthorized pleading.” Dkt. 22. Plaintiff does not cite
15 to any authority for this proposition. Plaintiff argues that the “Defendants use the Judge’s Findings
16 to make a defense after the Judge told them of that Defense, namely the Eleventh Amendment.” *Id.*,
17 at 2. Plaintiff fails to show why this is grounds to reject the Report and Recommendation. Plaintiff’s
18 objections are without merit. He makes no showing that the Report and Recommendation should
19 not be adopted.

20 Accordingly, the Court does hereby find and **ORDER:**

- 21 (1) The Court **ADOPTS** the Report and Recommendation (Dkt. 17);
- 22 (2) Plaintiff’s claims against the State of Washington are **DISMISSED WITH**
23 **PREJUDICE**; and
- 24 (3) The Clerk is directed to send copies of this Order to Plaintiff, counsel for Defendants
25 and to the Hon. J. Richard Creatura.

1 DATED this 11th day of May, 2009.

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3 Robert J. Bryan

4 United States District Judge

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26 ORDER - 3